

REMARKS**Specification Objections**

The objections to the specification set forth by examiner on page 2 of the Office Action have been corrected. On page 5, antecedent basis for claim 7 has been provided by inserting the sentence "Further contemplated compositions may also include a tocol." No new matter was added by virtue of this amendment.

35 USC § 112

Claim 8 was rejected under 35 USC § 112 as lacking enabling support. The applicant disagrees, nevertheless cancelled claim 8 to advance prosecution of this matter.

Claims 1-16 were rejected under 35 USC § 112 as being indefinite for the use of the term "thaumatin-like proteins". The applicant disagrees. Thaumatin-like proteins are well known in the art (*e.g.*, search of the term "Thaumatin-like protein" in Medline as of January 21, 2003 provided 37 references). Furthermore, the specification (see page 4, lines 4 *et seq.*) expressly refers to selected references that describe such proteins. Thus, the term "Thaumatin-like protein" is well defined and the Examiner's rejection should be withdrawn.

Claims 9 and 16 were rejected under 35 USC § 112 as being indefinite for the use of the term "about". Claims 9 and 16 were amended to remove the objected term.

35 USC § 102

Claims 1-16 were rejected under 35 USC § 102(b) as being clearly anticipated by Fox (U.S. Pat. No. 5,725,901). The applicant disagrees.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Among other elements, all of the present claims require "...a bioactive compound that increases a rate of fermentation of a microorganism...", wherein the "...bioactive compound

binds to a thaumatin-like protein...". **None of these elements can be found in the Fox reference.** Thus, claims 1-16 are not anticipated by Fox.

The Examiner argues that the claimed products are obtainable by extracting barley with water, which would be a brewer's wort. It is unclear to the applicant how brewer's wort and the teachings in the Fox reference could even provide a basis for obviousness rejection. Fox teaches purified beta-glucan isolates from barley, however, is **entirely silent on the issue of a bioactive compound**, let alone a compound **that binds to a thaumatin-like protein**. Still further, even if there was some teaching or suggestion in the Fox reference that would point to such a compound (which is NOT the case), Fox would still teach away from the subject matter as presently claimed. For example, Fox motivates a person of ordinary skill in the art to employ isolated beta-glucan in food stuffs. However, **food stuffs are entirely inconsistent with a material that enhances the fermentation of a microorganism** as presently claimed. Therefore, claims 1-16 are also not obvious over Fox.

ATTACHED MARKED-UP VERSION OF CHANGES

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "VERSION WITH MARKINGS TO SHOW CHANGES MADE".

REQUEST FOR ALLOWANCE

Claims 1-7 and 9-16 are pending in this application. The applicant requests allowance of all pending claims.

Respectfully submitted,

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VERSIONS WITH MARKING TO SHOW CHANGES MADE

In the Specification

On page 5 in line 24, the following sentence has been inserted:

Further contemplated compositions may also include a tocol.

In the Claims

8. Canceled.
9. (Amended) The composition of claim 1 wherein the bioactive compound has a molecular weight of no more than 1000Da and has an UV absorption maximum of [about] 260nm.
16. (Amended) The composition of claim 12 wherein the extract has a molecular weight of no more than 1000 Da and has a UV absorption maximum at [about] 260nm